No. 92-844

Supreme Court, U.S.
FILED
DEC 17 1992
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1992

OWENS-CORNING FIBERGLAS CORPORATION,
Petitioner,

-v-

LEONARD ADAMS, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

RESPONSE IN OPPOSITION TO MOTION TO DELAY DETERMINATION OF PETITION FOR WRIT OF CERTIORARI PENDING DISPOSITION OF TXO PRODUCTION CORPORATION V. ALLIANCE RESOURCES CORPORATION

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RESPONSE IN OPPOSITION TO MOTION TO DELAY DETERMINATION OF PETITION FOR WRIT OF CERTIORARI PENDING DISPOSITION OF TXO PRODUCTION CORPORATION V. ALLIANCE RESOURCES CORPORATION

AND NOW, come Respondents, by their attorneys, Tybe A. Brett, Esquire and Henderson & Goldberg, P.C. and Segal & Davis, and file its Response in Opposition to Motion to Delay Determination of Petition for Writ of Certiorari Pending Disposition of TXO Production Corporation v. Alliance Resources Corporation as follows:

1. Petitioner Owens-Corning Fiberglas Corporation (OCF) filed a Petition for a Writ of Certiorari, to which Respondents filed a Response on November 20, 1992.

2. Previously, this Court had denied a Petition for a Writ of Certiorari, raising the same issues as those raised in OCF's Petition by another defendant in the same trials as those involved in the instant Petition. Keene Corporation v. Adams, 61 U.S.L.W. 3352 (U.S. Nov. 9, 1992) (No. 92-359).

3. If this Court's decision to grant certiorari in TXO Production Corporation v. Alliance Resources Corporation, 61 U.S.L.W. 3392 (U.S. Nov. 30, 1992) (No. 92-479), had any significance for the instant Petition, then Petitioner should have addressed that significance in a Reply Brief or Supplemental Brief, which it could have timely filed under Supreme Court Rules 15.6 or 15.7.

4. Further, the Clerk should have refused OCF's Petition for a Writ of Certiorari under Supreme Court Rule 13.3. As stated in the Response to Petition for a Writ of Certiorari at 6 n.2, the West Virginia Supreme Court refused OCF's petition for appeal on

February 5, 1992. OCF then filed a notice of renewal of its petition for appeal, but under the pertinent West Virginia Rule of Appellate Procedure, such a notice must be filed within the period of time for filing the original petition, but in the instant case, that period had expired on November 1, 1991.

5. Pursuant to Supreme Court Rule 13.1, OCF's Petition for a Writ of Certiorari should have been filed within 90 days after entry of the order denying review by the West Virginia Supreme Court, or on May 5, 1992. OCF did not file its Petition for a Writ of Certiorari by this date, nor did it timely request an extension of time within which to file its Petition.

6. In addition, the issues in the TXO case are completely distinguishable from those in the instant Petition. For example, in TXO, the ratio of punitives to compensatories was over 500:1, while in the instant petition, the ratio of punitives to compensatories was only 2.4:1. Moreover, unlike the TXO case, in which a major issue is whether the punitive damages are excessive, OCF's Petition does not challenge the sufficiency of the evidence of punitive damages but rather asserts that multiple punitive damage awards are unconstitutional solely by virtue of their repetitiveness.

7. OCF did not preserve or raise the issues raised in the TXO Petition.

8. For the reasons stated in the Response, this Court should deny OCF's Petition for a Writ of Certiorari, and there is no reason to delay its decision on the Petition.

WHEREFORE, Respondents respectfully request that this Court deny OCF's Petition for a Writ of Certiorari.

Respectfully submitted,

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Dated: December 17, 1992